IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ petition No. 17 of 2004 (S/B)

Date of decision : 15th July, 2005

A.F.R. (Approved for Reporting)

Not Approved for Reporting

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ petition No. 17 of 2004 (S/B)

Rajendra Nath,
S/o Dr. Kedar Nath,
R/o 191, Civil Lines Bareilly. …….Petitioner

Versus

1. Nainital Bank Ltd.,
   G.B. Pant Marg, Nainital,
   Through its Chairman.
2. Assistant General Manager (P&D) /
   Disciplinary Authority,
   Nainital Bank Ltd.,
   G.B. Pant Marg, Nainital.
3. Inquiry Officer,
   Nainital Bank Ltd.,
   Nainital Bank Building,
   Railway Bazar, Haldwani, Nainital. …… Respondents

Mr. Paresh Tripathi, Advocate for the petitioner.
Mr. A.K. Verma and Mr. A.K Joshi, Advocates for the respondents.

Coram: Hon. Cyriac Joseph, C.J.
Hon. Rajesh Tandon, J.

Dated: July 15th , 2005

(Per Hon'ble the Chief Justice)

1. The petitioner Sri Rajendra Nath is an officer of Grade /Scale II in the Nainital Bank Ltd. (first respondent in the writ petition). By Annexure 1 order dated 5th May, 2003 of the Assistant General Manager (P&D) and Disciplinary Authority (second respondent in the writ petition), the petitioner was suspended from the Bank's service with immediate effect. According to Annexure 1 Order, the petitioner was suspended pending issue of charge sheet and inquiry into his conduct in the matter of irregularities observed in the working of Sitapur Branch relating to the period he was working there as Branch Manager between 28.05.2002 to 09.04.2003. it was stated in the order that during the period of suspension, the petitioner would be paid subsistence allowance as per Clause 8.36 of Nainital Bank Officers Conduct and Disciplinary Regulations, 1988. Thereafter, Annexure 2

Memorandum dated 6th August, 2003 issued by the second respondent was served on the petitioner. In Annexure 2 it was stated that the second respondent as the Disciplinary Authority had decided to initiate disciplinary proceedings for major penalties against the petitioner for the acts of misconduct reported from the Bareilly and Sitapur Branches of the Nainital Bank Ltd. It was also stated that the disciplinary proceedings were being initiated in terms of Regulations 8.23 and 8.26 of the Nainital Bank Officers Conduct and Disciplinary Regulations, 1988. Articles of Charges framed against the petitioner and Statement of Allegations upon which the Articles of Charges were based, were annexed to Annexure 2 Memorandum. The petitioner was directed to submit his written statement of defence in respect of the said Articles of Charges and Statement of Allegations within 15 days of receipt of the Memorandum. It was also stated that after considering the written statement of defence, if any, submitted by the petitioner, an inquiry might be instituted in respect of those Articles of Charges which were not admitted by the petitioner. The petitioner was required to specifically admit or deny the charges in his written statement of defence . The charges framed against the petitioner were:-

i. Act of willful violation of norms of the Bank and misusing his official position.
ii. Acting in a manner lacking honesty and integrity in the discharge of his official duties.
iii. Acting in a fraudulent manner.
iv. Acts prejudcial to the interest of the Bank.
v. Acting in a manner with an intention to cause pecuniary loss to the Bank.
vi. Acts of unbecoming of an Officer of the Bank.

2. Before serving the Articles of Charges and the Statement of Allegations on the petitioner , a First information Report dated 27th June ,2003 had been lodged by the Bank against the petitioner and the case was registered as Crime No. 1693 of 2003 at Police Station

Kotwali District Bareilly under Sections 420,467,468 and 471 of the Indian Penal Code. Another First Information Report dated 16th July, 2003 also had been lodged by the Bank Against the petitioner and a case was registered as Crime no. 1061 of 2003 at Police Station Kotwali , District Sitapur under Section 409 of the Indian Penal Code . True copies of the said First Information Reports have been produced as Annexures 4 and 3 respectively to the writ petition.

3. When the petitioner received Annexure 2 Memorandum dated 6th August, 2003, he submitted Annexure 5 Representation dated 16/18th August, 2003 to the second respondent denying all the charges and allegations made against him . He also stated that since the Bank had lodged two First information Reports against him in respect of the same allegations contained in Annexure 2 Memorandum and since he had to defend himself in the criminal court , he was not in a position to submit his Statement of Defence then as it would prejudice his case in the Criminal court . it was further stated that he would submit his defence in the criminal court as per the court procedure and thereafter, submit his defence to the second respondent. In Annexure 5 Representation, the petitioner also requested that the departmental inquiry may be kept in abeyance till the decision of the criminal court. However, through Annexure 6 Letter dated 6th September, 2003 the second respondent rejected the petitioner's request to keep the department inquiry in abeyance till the decision of the criminal court. The petitioner was also informed that his specific denial of the charges had been noted and that he would have full opportunity to submit his statement of defence and to defend himself in respect of the Articles of Charges during the course of inquiry proceedings before the Inquiry Officer to be appointed . Thereafter, Sri Narendra Sharma, Senior Manager (Inspection) was appointed as Inquiry Officer. The petitioner submitted Annexure 8 Representation dated 27th December, 2003 to the Inquiry Officer pointing out the irregularities and the defects in the Articles of Charges and Statement of Allegations and also the pendency of the proceedings in the criminal court in respect.

of the same allegations. He requested that the departmental inquiry may be quashed or kept in abeyance till the decision of the criminal court . However on 2nd January , 2004 , the Inquiry Officer held that since the Disciplinary Authority had already rejected the petitioner's request to keep the departmental inquiry in abeyance, the inquiry proceedings would continue. Thereupon, the petitioner filed this writ petition.

4. The main prayer in this writ petition is for quashing Annexures 1,2 and 6 as well as the order dated 2nd January, 2004 of the Inquiry Officer (third respondent in the writ petition). There is also a prayer for commanding the respondents not to proceed with the disciplinary proceedings against the petitioner till the conclusion of the criminal proceedings. The writ petition was filed on 17.02,2004 and it was admitted by this court on 18.02.2004. while admitting the writ petition, an interim order also was passed on 18.02.2004 staying the departmental proceedings. In view of the said stay order passed by this court , the departmental inquiry could not be proceeded with.

5. It is admitted by the counsel for the parties that in respect of Crime No. 1061 of 2003 of Police Station Kotwali, District Sitapur, charge sheet was filed in the court on 31.01.2004 for offences under Sections 467, 468,471 and 409 IPC and in respect of Crime No. 1693 of 2003 of Police Station Kotwali, District Bareilly, no charge sheet has been filed so far .

6. We have heard Mr . Paresh Tripathi, learned counsel for the petitioner and Mr. A.K. Verma, learned counsel for the respondents.

7. The only question that arises for consideration is whether the disciplinary proceeding initiated against the petitioner should be kept in abeyance till the conclusion of the criminal proceeding pending against him before the criminal court. It is not disputed that the disciplinary proceedings as well as the criminal proceedings are based on the same set of facts and allegations . According to the learned

counsel for the petitioner, any defence taken by the petitioner in the disciplinary proceedings will prejudice him in the proceedings before the criminal court and therefore, the disciplinary proceedings are liable to be kept in abeyance till the conclusion of the criminal proceedings. On the other hand, learned counsel for the respondents contended that it is not mandatory that the disciplinary proceedings should be kept in abeyance in very case where criminal proceedings are pending. Learned counsel pointed out that the petitioner was placed under suspension on 5th May, 2003 and he is being paid subsistence allowance by the Bank since then without getting any work from him. He also pointed out that though the Articles of Charges and Statement of Allegations were issued as early as on 6th August, 2003, the disciplinary proceedings are held-up for the last about two years. Only in one criminal case, the charge sheet has been filed and in the other criminal case, charge sheet is yet to be filed. Even in the case in which charge sheet has been filed, the trial has not taken place. In such circumstances, according to the learned counsel, the criminal cases against the petitioner will not be disposed of in the near future and they will be pending for several years to come. It is contended that it is not in the interest of the Bank to keep the disciplinary proceedings in abeyance indefinitely compelling to Bank to keep the petitioner under suspension and to pay him subsistence allowance without taking any work from him. It is also contended that it will be in the interest of the petitioner to have the disciplinary proceedings concluded at the earliest so that in case he is exonerated, he would be reinstated in service and would be getting full salary and allowances and in case his service is terminated, he would be free to seek other employment. In support of their contentions, learned counsel for the parties invited our attention to the various decisions of the Hon'ble Supreme Court.

8. Learned counsel on both sides relied on the decision of the Hon'ble Supreme Court in ***Capt. M. Paul Anthony vs Bharat Gold Mines Ltd . and another, reported in 1999(3) SCC 679.*** After

referring to the earlier decisions of the Supreme Court , Their Lordships of the Hon'ble Supreme Court arrived at the following conclusions:

> "22.The conclusions which are deducible from various decisions of this court referred to above are :
>
> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (ii) If the department proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact , it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
>
> (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
>
> (iv) The facts mentioned at 2nd and 3rd above cannot be considered in isolation to stay the departmental proceedings, but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
>
> (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest".

The supreme Court has categorically held that there is no bar in Conducting the departmental proceedings and the proceedings in a criminal case simultaneously, though separately . However, if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated

questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. In the case before us, it is not disputed that the departmental proceedings and the criminal case are based on identical and similar set of facts. It cannot be disputed that the charges against the petitioner in the criminal cases are of a grave nature which involve complicated questions of law and fact. Therefore, going by the law laid down by the Supreme Court, this Court was justified in passing an interim order staying the departmental proceedings in the circumstances of this case.

9. However, the stay order has been operating for about 17 months and charge sheet has been filed only in one criminal case and no charge sheet has been filed in the other criminal case. Even in the case in which charge sheet has been filed the trial has not started. As rightly pointed out by the learned counsel for the Bank, the criminal cases cannot be expected to be concluded in the near future and they will be pending for years to come. Therefore, a question arises whether at present there is any justification for keeping the departmental proceedings in abeyance any more. In our view, such a situation was anticipated by the Hon'ble Supreme Court and the course to be adopted in such a situation was indicated in the above-mentioned Judgment. In Conclusion No. (iv), the Hon'ble Supreme Court held that the factors mentioned at Conclusions Nos. (ii) and (iii) cannot be considered in isolation to stay the departmental proceedings and that due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed. In Conclusion No. (v), it was further held that if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest. In our view, the above-mentioned

conclusion No (v) of the Honb'le Supreme court is squarely applicable to the facts of this case. Therefore, the stay order passed by this Court is liable to be vacated and the writ petition is liable to be dismissed to enable the respondents to resume and proceed with the departmental proceedings despite the pendency of the criminal cases against the petitioner.

10. In taking the above view, we draw support also from the decision of the Hon'ble Supreme Court in ***state of Rajasthan vs B.k. Meena and others reported in 1996(6) SCC 417*** in which the Hon'ble supreme court held as follows:

> "14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable ' , 'advisable ' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasized, is a matter to be determined having regard to the facts and circumstances of a given case is pending on identical charges. The staying of disciplinary proceedings, it is emphasized, is a Matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced ". This ground has , however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover 'advisability' , ' desirability' or 'propriety' . as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. *and Tata Oil Mills* is also not an invariable rule .it is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground . They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even

where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceeding concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. *The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements* . The interest of the delinquent office also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty,he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest . While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

17.There is yet another reason . The approach and the objective in the criminal proceedings d and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings , the question whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment , as the case may be , whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings ,to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage , the decision may require reconsideration if the criminal case gets unduly delayed." (*Emphasis supplied).*

11. it may be mentioned that the view taken by the Supreme Court in Meena's case (supra) was approved by the Supreme Court in ***Depot Manager, A.P. State Road transport corporation vs Mohd. yousuf***

Miya and others reported in 1997(2) SCC 699 in the following words:

"8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with department enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (*sic* duty), as distinguished from mere private rights punishable under criminal law. when trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. the enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. it is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. it is always a question of fact to be considered in each

case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings." (*Emphasis supplied)*

12. It is also useful to refer to the decision of the Supreme Court in ***State Bank of India and others vs R..B. Sharma reported in 2004(102) FLR 1027*** where There Lordships held as Follows:

"7. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The Criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has so provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances, there would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence define under the provisions of the Evidence Act, 1872 (in short the 'Evidence Act''). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

13. in ***Kendriya Vidyalaya Sangathan and others Vs T. Srinivas reported in 2004(102) FLR 1045,*** the Supreme court, after referring to Paul Anthony's case and Meena's case, held as follows:

> "9. From the above, it is clear that advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course."

14. Again, in ***Hindustan Petroleum Porporation Ltd. and others Vs sarvesh Berry reported in 2005 LAB. I. C. 1624,*** the Supreme Court has held as follows:

> "10. There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trail of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending."

15. Applying the principles laid down by the Hon'ble Supreme Court in the above-mentioned cases, we are clearly of the view that since the criminal proceedings are still pending and are not likely to be concluded in the near future, the order staying the departmental proceedings should be vacated and the writ petition should be dismissed so that respondents are free to proceed with the disciplinary proceedings against the petitioner.

16. Hence, the interim order dated 18.02.2004 is vacated and the writ petition is dismissed . There will be no order as to costs.

(Rajesh Tandon,J.) **(Cyriac Joseph, C.J.)**

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